

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.134 of 1995

Arising Out of PS.Case No. -275 Year-1992 Thana –Begusarai Town P.S District- Begusarai

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Sanjay Singh, son of Shri Ram Sewak Singh, R/o Village-Ratanpur, Police Station
and District-Begusarai.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Ms.Sweta Raj (Amicus Curiae)

For the Respondent/s : Mr.S.B.Verma. A.P.P

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-06-2018

This Criminal Appeal has been preferred for setting aside the judgment dated 24.04.1995 passed by learned 1st Additional Sessions Judge, Begusarai, in Sessions Trial No.332/93/2/93. By the impugned judgment the learned trial Court has been pleased to hold and declare that the charge under Section 302/34 of the Indian Penal Code and under Section 27 of the Arms Act has been duly proved against the appellant. Appellant has been, accordingly, sentenced to imprisonment for life under Section 302/34 of the Indian Penal Code and further to sentence to rigorous imprisonment for five years under Section 27 of the Arms Act. Both the sentences have been ordered to run concurrently.

2. The prosecution case is based on the Fardbeyan of one Amod Kumar Singh (P.W.6) recorded on 26.09.1992 at 19.45 hours at the darwaja of Sakaldeo Singh of Village Ratanpur under Town Police Station, Begusarai. The Fardbeyan has been exhibited as Ext.6 in course of trial.

3. According to the informant (P.W.6) while the informant was in his house on 26.09.1992 at 7 P.M he heard hulla raised by the co-villager Baleshwar Singh (P.W.2) who was shouting that the co-villager Ram Sewak



Singh and his son Sanjay Singh were fleeing away after firing shot at Pramod Kumar Singh (the deceased) the informant came running to the place of occurrence and saw the co-villager Ram Sewak Singh (50 years) and his son Sanjay Singh (20 years) fleeing away from the place of occurrence. According to the informant, Sanjay Singh was carrying pistol in his hand. The informant saw his brother lying on earth in the pool of blood. The informant asked his brother, thereon his brother (the deceased) told him that while he was returning after study, the co-villager, Ram Sevak Singh caught hold of him from behind and then Sanjay Singh (appellant) shot at him by pistol. The informant further stated that he saw his brother had suffered firearm injury on his chest and was bleeding. The informant wanted to take him to hospital but in the meantime his brother died.

4. According to the informant, the reason behind the occurrence was that two days back he had kept 10 bags of Maize crop stored in Kola and could not lift the same because his tractor was under repairing but when he went with his tractor to lift the maize crop, he found that one bag of maize was less, thereupon, he enquired about the same from the watchman, Brahmadeo who told him that yesterday Sanjay Singh of Ratanpur had taken away one bag. It is further stated that when the informant came and enquired it from Sanjay Singh as to why he had taken one bag of Maize from Kola, Sanjay Singh is said to have told him that yes he had brought one Kola but what the informant will do to him. It is alleged that the informant had complained about the same incidence in the village, the appellant had threatened him that within a day or two either he, his father or his brother will be killed. The informant, therefore, alleged that for these reasons Ram Sewak Singh and his son Sanjay Singh had murdered his brother Pramod Kumar Singh by firearm injury.

5. After investigation police submitted a charge-sheet against Ram Sweak Singh and his son Sanjay Singh, cognizance was taken and thereupon, the records were committed to the Court of Sessions for trial. In course of evidence



altogether 10 witnesses were examined on behalf of the prosecution. Balmiki Singh (P.W.1), Baleshwar Singh (P.W.2) and Amod Kumar Singh (P.W.6) deposed as eye-witnesses. P.W.3 namely Ram Milan Singh has deposed on the point of inquest report and has proved his signature Ext.1 as also the signature of another inquest report witness Ram Ujagar Singh (Ext.1/1). The inquest report has been proved as Ext.2. P.W.4 was, however, tendered by the prosecution. Kamli Singh (P.W.5) has deposed that at Ratanpur Tinmuhani, Darogaji seized chapal, two books having blood stain, one pen and blood stained earth and had prepared the seizure list on which he put his signature (Ext.3). P.W.10 Ranjan Kumar is another witness who had put his signature on the seizure list, his signature has been marked as Ext.3/1. He has stated that Kali Singh was his grandfather and has two brothers Chattar and Digambar. Mahabir Singh is his brother and Ram Milan Singh is his nephew. He also deposed that the blood was spread over area of four fingers.

6. P.W.7 is the Doctor who conducted the examination on the dead body of the deceased. He had found lacerated wound 2"Xquarter inchX1/2" on lower lip, 2 entry wound 1"X1/2" communicating to chest on left below cervical. On dissection the Doctor also found fracture in the second rib. The Doctor also found exit wound 1 ½ X ½" communicating to chest and on back on the left side of chest at 4th rib. P.W.7 has proved the post mortem report as (Ext.5). He has explained that to him shot injury includes injury by pistol, rifle, country made pistol and revolver.

7. P.W.8 is the Investigating Officer who has stated that the place of occurrence is the Tinmuhani Chowk on the road which goes from north to south and from there one road from west meets here. On the Tinmuhani over pitch portion of the main road he found blood in much quantity and the dead body was lying facing to ground. He has also proved that in the contiguous east of the place of occurrence there are electric and telephone poles. He has proved the



seizure list as Ext.7. He has also said that the seized articles were kept in Malkhana as per M.R.No.41/92. He has proved the writing in this regard (Ext.8). This witness has stated that after submission of charge-sheet the seized articles were sent to Court Malkhana by chalan which is prepared by the In-Charge Thana Malkhana. No person at the place of occurrence indicated that the bulb was giving light from such pole. He has stated that at the time of inspection of place of occurrence he had arranged for the light. In his cross-examination he has stated that near the place of occurrence there was a shop of Sakaldeo Singh and a pucca house of Ram Sumiran Singh but they were not present at that time. The Investigating Officer had not gone in search of them. He has further stated in his cross-examination that the road connecting the market to Ratanpur Village was a very busy road. He had not conducted any examination on the point of the alleged occurrence of lifting of one bag of Maize from Kola and he had not investigated Brahmdeo, Biso Singh, Arjun Singh, Raj Bali Singh and Indradeo Singh. The Investigating Officer further stated that the witness Balmiki Singh had not stated that at the place of occurrence Ramesh Singh was also there. According to the Investigating Officer, the informant Amod Kumar Singh had not told him that he had identified the accused persons in the bulb light.

8. P.W.9 is a formal witness who has proved the chalan regarding the seized articles. He has said that he has no knowledge about the case. P.W.10 has said that on 26.09.1992 at 08.00 P.M he was returning after tuition and on reaching Ratanpur Tinmuhani he found gathering near the dead body of Pramod Kumar Singh and at the relevant time police were present. In his presence Darogaji seized two books, one dot pen having blood stain, one pair chapel and blood stained earth. He proved chapel (Ext.I), book (Ext I/I), dot pen (Ext.I/II) and blood stained earth (Ext.I/III). In his cross-examination he has said that the Investigating Officer did not examine him and at the relevant time 50-60 persons were present. He did not know the name of the book. All the articles were kept



on the earth. Darogaji did not sign on the book.

9. The case of the defence was that the prosecution had assigned the motive regarding the theft of maize but there was no evidence at all at this point to prove such motive and as such the very genesis of the case becomes doubtful. It was further contended that the witnesses who claim this to be the eye-witnesses come from one stock and they are highly interested so their evidence is not to be relied upon. Reliance was placed on the judgment of the Court in the case of **Upendra Singh vrs. State** reported in **B.B.C.J. 1983 at page 230**. It was further submitted on behalf of the defence that the oral dying declaration is said to be of the deceased is not worth consideration as there is nothing on the record to suggest that he was in a condition to speak. The defence also questioned the case of the prosecution on the point of identification. According to the defence the Investigating Officer did not find any electric bulb and as such the prosecution version becomes doubtful.

10. The learned trial Court went through the entire evidences, the pleas of the defence and the answer to such pleas given by the prosecution, the learned trial Court found that the prosecution had been able to make out a case beyond all reasonable doubt and, accordingly, convicted the accused-appellant.

11. While assailing the impugned judgment the learned (*amicus curiae*) submitted that the learned trial Court has failed to appreciate the prosecution evidence and the defence case raising doubts over the veracity of the statement of the prosecution witnesses. Learned counsel submits that according to the informant he came running on hearing hulla of co-villager Baleshwar Singh (P.W.2) and on his asking from the injured Pramod Kumar Singh he informed the informant about the complicity of the accused and shots fired by the appellant. However, this statement of P.W.6 is not worth reliable because from the entire evidence available on the record it is evident that nobody had seen the occurrence as it was dark at about 07:30 P.M and the presence of P.W.2 at the place of



occurrence is also not proved beyond all reasonable doubts.

12. Learned counsel submits that it was not possible for P.W.6 to come running quickly and to gather information of the alleged occurrence from the injured. Learned counsel submits that according to the Investigating Officer, near the place of occurrence there was a shop and residential house but neither the shop owner nor the house owner came to the place of occurrence and police did not enquire about the same from them, this according to learned counsel shows not only the lacuna in the present case but also a fact indicating that the whole prosecution case has been built up on the statement of the witnesses who came from the same family and, therefore, the learned trial Court has not rightly recorded the submission of the defence that all the prosecution witnesses came from one stock.

13. It is further submitted that the Investigating Officer did not find any light at the place of occurrence and he has admitted in his cross-examination that he had to arrange for light at the place of occurrence. Learned counsel representing the appellant as *amicus curiae* further submits that even the genesis of the occurrence i.e., the motive behind the same has not been proved in the present case. It is submitted that the Investigating Officer did not examine Brahmadeo, Biso Singh, Arjun Singh, Raj Bali Singh and Indradeo Singh and in answer to the Court question the Investigating Officer had stated that the informant did not tell him about these persons. It is further submitted that the learned trial Court has failed to appreciate the case of the defence and has convicted the appellant on irrelevant consideration.

14. On the other hand, learned A.P.P representing the State would submit that the learned trial Court has rightly convicted the accused and while doing so the Court has considered each and every plea of the defence. It is submitted that P.Ws 1 and 2 are independent eye-witnesses. In course of cross-examination these witnesses have stood by the prosecution story P.W.1 has stated



that the occurrence took place on Begusarai Ramdiri road which goes from north to south and the dead body was lying at Tinmuhani. From the Tinmuhani one road goes towards west. Between the house of the informant and the place of occurrence, Ram Milan Singh, Dhanik Lal Sharma and he had got houses. From the Tinmuhani the house of Amod is at a distance of 10 lagis and in the contiguous west-north there is a Bargad Tree and by the side of such tree Sakaldeo Singh and Sita Ram Singh have got their houses. These houses are in the north of the road. In contiguous east of the road there is a house of Ram Pukar Singh and in the contiguous south of the Tinmuhani there is a house of Ram Ujagar Singh. From the evidence of P.W.1 it is evident that he has fully explained the place of occurrence. He has remained at the place of occurrence for about 45 minutes. The blood was found on the earth in the area of 1-1 ½ hand.

15. P.W.1 has stated that the house of P.W.2 Baleshwar Singh is at a distance of 12-13 lagis in the east from his house. This witness has stated that while he was at his darwaja then he heard the sound of Baleshwar Singh and on such hearing he had come to the place of occurrence from south and saw that the accused persons were running fast. This witness has supported the case of P.W.6 that when he came running and asked Pramod (deceased) about the occurrence the deceased informed him about the whole occurrence. This witness has further stated that at the relevant time there was light and he has asserted to have told this to the Investigating Officer. According to this witness he had informed the Investigating Officer that Pramod disclosed that Ram Sewak caught hold of him from behind and then Sanjay shot at him.

16. P.W.2 has also denied his relationship with the victim. He has denied that Chatter Singh was his ancestor. He has stated that Arjun and Vidyasagar are his brothers but it is not a fact that Chatter Singh was his ancestor. All the witnesses in this case belong to the Khandan of Jhummak Singh. P.W.2 claims himself an eye-witness. He has narrated the entire occurrence. He



claimed that he had seen that accused Ram Sewak Singh who had caught hold of Pramod and then Sanjay opened revolver on him from side which hit his left Panjara. He had raised alarm on which Amod and Balmiki Singh ran there and at the relevant time both the accused persons were fleeing towards west. He has disclosed that at the time of occurrence light was coming from the electric bulb and in that very light he identified the accused persons.

17. P.W.6 is the informant of this case who has also withstood the test of this cross-examination. He has reiterated the entire prosecution case. He has proved the signature on the Fardbeyan. He has admitted that the accused would be in the village relationship his brother. In his cross-examination he has stated that Ram Sewak Singh (deceased convict) had two plots there but he cannot say about the area of the land. They were at the distance of 4 to 5 plots to his plot. This witness has reiterated the reason for the occurrence. About the place of occurrence this witness had stated that in between his house and Tinmuhani there is only one house of Balmiki Singh. At the time of Halla he was in the Verandah of his house. He has reiterated that he had seen the accused persons fleeing away from the place of occurrence. He had seen the pistol of this appellant. On the point of identification he has reiterated that there was a bulb on the electric pole standing in the eastern side and had shown the electric pole to the Daroga. He has stated that he had told police about his identification done in the bulb light. He has denied that there was no light at the time of occurrence.

18. We have found from the evidence available on the record that the only reason behind the occurrence is the one bag of Maize crop and the evidence further shows that both the parties had their land in their vicinity and they had developed some differences over the said Maize crop and theft of one bag of Maize crop. The existence of electric pole and bulb at the place of occurrence is not in question, the defence has though tried to raise the issue on the point of identification but the defence has not been able to raise any reasonable



doubt on the veracity of the statement of the prosecution witnesses on the question of identification in the bulb light. No suggestion was given to the Investigating Officer in course of cross-examination saying that there was no electric pole or light coming through the bulb on the said electric bulb. The Investigating Officer has no doubt stated that at the time of inquest/inspection he had made arrangement of light but that itself cannot be said to be a piece of evidence on the point that there was no electric pole and bulb providing electricity at the place of occurrence which could have been sufficient for the purpose of identification. To make arrangement for the purpose of inspection may be for getting sufficient light to minutely inspect the place of occurrence. The defence had not suggested a single line that there was no electric pole and bulb light at the place of occurrence. The learned trial Court has also found and rightly so that while questioning the oral dying declaration of the deceased, the case of the defence has to be considered taking note of the fact that when the Doctor (P.W.7) came in the dock the defence was required to put a question to the Doctor whether the deceased was in a state of making dying declaration but in this case defence has not put any question to the Doctor as to whether the deceased was in a position to make a statement. In fact, the defence did not ask any question to the Doctor on the point of the condition of the deceased and his capability to make a statement narrating the occurrence. The defence has thus not been able to raise doubt on the capability of the deceased to make statement regarding the persons who had committed the offence.

19. We find that the learned trial Court has considered all the defence of the appellants, we have discussed the same once again in order to consider the submissions of the appellant. In the kind of evidences which are available on the record and discussed hereinabove, we do not find any inconsistency in the evidence of the prosecution witnesses either on the point of identification or on the point of oral dying declaration of the deceased. The



defence has not been able to raise any reasonable doubt in the mind of the Court so as to give him the benefit of doubt in the present case.

20. The Criminal Appeal has thus no merit and is, accordingly, dismissed. The appellant is on bail, hence, is directed to surrender forthwith to undergo the remaining period of sentence.

21. Let a copy of this order be sent to the learned Chief Judicial Magistrate, Begusarai, for taking appropriate steps to get appearance of the accused for his undergoing the remaining period of sentence.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
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